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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,399	12/03/2003	David Forehand	MEM 2657001	5565
21909	7590	10/10/2007	EXAMINER	
CARR LLP			MITCHELL, JAMES M	
670 FOUNDERS SQUARE			ART UNIT	PAPER NUMBER
900 JACKSON STREET			2813	
DALLAS, TX 75202				
MAIL DATE		DELIVERY MODE		
10/10/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/726,399	FOREHAND, DAVID
	<b>Examiner</b>	<b>Art Unit</b>
	James M. Mitchell	2813

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 July 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12,24-33,44-53,64,66 and 68-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-12 and 68 is/are allowed.
- 6) Claim(s) 24,44,64,66,69,70 and 73-80 is/are rejected.
- 7) Claim(s) 25-33,45-53,71 and 72 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>7/9/07</u>	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

1. This office action is in response to applicant's request for continued examination filed July 9, 2007.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 74 and 75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 74 and 76 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: is the placement of the sacrificial layer with respect to the other parts.

5. Claim 75 recites the limitation " the sacrificial material" in line 3. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claim 24, 44, 64, 66, 68, 69, 70-73, 77-80 are rejected under 35 U.S.C. 102(b) as being anticipated by Marrs (U.S. 5,485,037).

8. Mars (e.g. Fig. 1A, 1B) discloses:

(cl. 24, 44, 64, 66) A method for packaging a device having at least one movable region, comprising: forming a housing (108) over the device (106), the housing having at least one aperture (116a) the aperture having a size and shape such that a removing material is able to pass through the aperture (e.g. any material less viscous than protective material) but a protective material (110) cannot pass through the aperture (Fig. 1B); depositing the protective material adjacent at least a portion of the housing Fig. 1B), wherein the protective material at least flows into the at least one aperture sealing the aperture in an amount sufficient to substantially close the aperture (Col. 14, Lines 27-32) without entering the housing (e.g. open cavity, not labeled; Fig. 1B) sufficiently to interfere with operation of the at least one movable region of the device; and curing the protective material (e.g. plastic molding process and therefore curing with a gas and increased temperature; Col. 5, Lines 49-55) allowing or causing protective layer to harden (package without molding dies and therefore harden/ solid; Fig. 1B); (cl. 70) such that a removing material less viscous than the protective material is capable/able to pass through apertures;

(cl. 77) depositing conductive material (109).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marrs (U.S. 5,485,037).

11. Marrs discloses the elements stated in paragraph 8 of this office action, but does not explicitly disclose etch rate of the protective layer or the pressure used in curing.

12. However, the selection of an etch rate is dependent on the choice of material. As such, the selection would have been obvious to one of ordinary skill in the art, since it has been held that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination. Sinclair & Carroll Co. v. Interchemical Corp., 325 U.S. 327, 65 USPQ 297 (1945).

13. Furthermore, the selection of the pressure being 1 Pascal would have been obvious, since it has been held that where the general working conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (CCPA 1955).

#### ***Allowable Subject Matter***

14. Claims 1-12 and 68 are allowable and claims 25-33, 45-53, 71 and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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15. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not disclose the use of a sacrificial material with a protective layer including all the limitations of the independent claim.

***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M. Mitchell whose telephone number is (571) 272-1931. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead Jr. can be reached on (571) 272-1702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ex. Mitchell, J.D.  
October 1, 2007

  
CARL WHITEHEAD, JR.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800